

REMARKS

Claims 11, 20, 21, 23, 27 and 28 were rejected under 35 U.S.C. § 102(b) as anticipated by Heydarpour et al. (U.S. Patent 5,843,540). Applicant traverses this rejection.

Applicant's independent claim requires at least a three-layer bottle. The middle layer of the three-layer combination must contain at least 25% by weight of the middle layer of post-consumer recycled resin.

Heydarpour et al. under the Technical BACKGROUND lists advantages for polyethylene pouches "over traditional packages such as glass bottles, paper cartons and **high density polyethylene jugs**. (emphasis added)". See column 1, lines 29-32. Among the advantages of polyethylene pouches is that they consume less raw material, require less space in a landfill, are **recyclable**, can be processed easily, require less storage space, require less energy for chilling and can be readily **incinerated**. See column 1, lines 32-37.

Apparently Heydarpour et al. does not believe that high density polyethylene jugs have the same recycling potential as that of pouches. Since the presently claimed **bottle** is much closer to "jugs" than to "pouches", it would appear that the reference is not stating recyclability for plastic bottles.

Further, even with polyethylene pouches, the reference suggests that they are not necessarily recyclable but could well be directed to the incineration alternative.

Still further, the reference utilizes the word “recyclable” rather than “recycled”. By “recyclable” is meant that there is potential but not necessarily actual recycling. Based on all the foregoing considerations, the Examiner’s position that Heydarpour et al. specifically teaches a bottle with a layer that is partially formed from post-consumer recycled resin is an untenable one. This reference does not anticipate the post-consumer recycled resin element of the claims.

Neither does Heydarpour et al. render the claims obvious. There is no disclosure of any post-consumer recycled resin. Absent disclosure of this element, the Examiner has failed to present a *prima facie* case for obviousness.

Even if the Examiner were to have established *prima facie*, the presence of post-consumer recycled resin, there is no disclosure that this resin appear in a middle layer of a bottle. Neither is there any disclosure with respect to at least 25% by weight of recycled resin being present. The only counter point of the Examiner is that mere disclosure of “a recycled bottle” is sufficient to be a disclosure that a middle layer comprises at least 25% by weight post-consumer recycled resin. This view has no basis in the reference.

Applicant has argued that intuitively a skilled technician would be hesitant to incorporate a significant amount of recycled resin into a bottle expected to be transparent or translucent. The reason for this would be that recycled resin is likely to interfere with light transmittance. The Examiner asserts that applicant has not presented any evidence for this.

"Recycled resin" does not have any specific properties. Almost by definition it is a mixture of plastics from trash collection or re-worked in-plant material. Clarity in a material is not enhanced by components of that material which are unlike one another. Light dispersion occurs from non-uniformity. An analogy is recycled paper. Invariably the articles formed of recycled paper have that "brown" color. Applicant requests that Official Notice be taken that recycling degrades properties relative to virgin materials, and that this includes light properties.

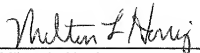
Claims 14-16 were rejected for obviousness under 35 U.S.C. § 103(a) over Heydarpour et al. (U.S. Patent 5,843,540) in view of D'Alessandro (U.S. Patent 4,068,663). Applicant traverses this rejection.

D'Alessandro was cited for disclosing the interchangeability of polyethylene and polypropylene in the making of a bottle. Attention was drawn to column 3, lines 4-9.

The cited passage refers to bottles that could be made of materials such as low and high density polyethylene, polypropylene or polystyrol. Yet there is no teaching or suggestion that mixtures of these materials be utilized. Applicant's claims 14-16 require a blend of polypropylene into the outer layer of metallocene polyethylene polymer. Moreover, a very specific concentration is claimed, i.e. from about 0.1 to about 50% by weight of the outer layer of polypropylene. D'Alessandro does not disclose these features. For this reason, a combination of Heydarpour et al. in view of D'Alessandro would not render claims 14-16 *prima facie* obvious.

In view of the foregoing comments, the Examiner is requested to reconsider the rejection and now allow the claims.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Milton L. Honig", is written over a horizontal line.

Milton L. Honig
Registration No. 28,617
Attorney for Applicant(s)

MLH/sm
(201) 894-2403